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Current Topics.

THE INNS OF COURT.

THOSE whose daily work takes them through the Temple have had much cause for grief and anger during the last few months. Fire and high explosive have wrought their ruin without discrimination on buildings beautiful and buildings ugly, and, as was to be expected, that which was most hallowed, the Temple Church, did not escape the barbarians' stupid rage. The well-known effigies of thirteenth-century knights in chain mail that lay in the centre of the circular nave were burned and destroyed, only one of them, that of Lord de Ros, completely escaping. Most of the interior of the church was burnt out, and nothing remains of the famous organ on which Purcell played and its carved screen attributed to Grinling Gibbons. Lamb Building, Essex Court, the Cloisters and Crown Office Row have all suffered in varying degrees at the hand of the barbarian. Whatever was left to burn in the Inner Temple Hall has been burned, and what was left of the old Master's House, the reading-room and the library are no more. All will mourn the passing of beautiful old Serjeants' Inn, which is now a heap of bricks and rubble. Destroyed by the Great Fire of 1666, it was erected again from designs by the Adam brothers. The Serjeants had moved from there to Chancery Lane as early as 1758, but the Inn was well known to solicitors both as a place for offices and as a means of access to the Temple. At No. 10 lived Lord Erskine from 1780 to 1800, and for the last twenty-four years it has been owned and occupied by Mr. J. Theodore Goddard, who, in a letter to *The Times* of 31st May, described it as one of the most beautiful period buildings in London. Gray's Inn, too, has lost its hall, chapel and library, thousands of books being burned. The hall is almost irreplaceable. It was built in 1556-59 in place of a hall which was destroyed by fire. Its graceful hammer-beam roof will be particularly difficult to replace. Fortunately, all the stained glass of the hall and chapel, some of it fourteenth century, a number of rare volumes, and all the records of the society are safely stored. This deliberate burning of national treasure is typical of the clumsy stupidity of the "furor Germanicus," and of its complete inability to understand the psychology of the people of this country, who are all the more determined to destroy this recurrent menace to civilisation.

TRINITY LAW SITTINGS.

THE reduced number of cases in the lists for the Trinity Law Sittings, which began on Tuesday, 10th June, again reflects the drastic shrinking of general business activity not directly connected with the war effort. The total number of cases for the King's Bench Division is 167, as against 620 in the corresponding term for 1940 and 1,160 in 1939. Of these, 53 are long non-jury actions, 100 are short non-jury actions, seven are short causes, and seven are commercial cases. In the Chancery Division there are 34 causes (138 in 1940 and 183 in 1939). There are 14 actions in the Witness List, which is to be taken by Bennett, J., and Uthwatt, J., and the six actions in the Non-Witness List will be taken by Simonds, J., and Morton, J. The 47 companies' matters will be taken by Uthwatt, J. There are also seven appeals and motions in bankruptcy and a number of retained and assigned matters. The number of Probate cases is not to hand at the time of going to press, but there are six Admiralty actions, as against 17 in 1940 and four in 1939. There are 485 undefended divorce causes and 283 defended divorce causes. In the Divisional Court the total is 105, as against 69 for 1940 and 68 in 1939. There are 44 appeals in the Divisional Court list, one motion for judgment, one case in the Special Paper, seven appeals under the Housing Acts, one under the National Health Insurance Acts, and 38 appeals in the Revenue Paper. In the 1940 Trinity Term there were 28 appeals in the Revenue Paper and 26 in 1939. There is a total of 76 appeals in the Court of Appeal, as compared with 105 in the corresponding term of 1940 and 170 in 1939. There are four Chancery Appeals (seven in 1940, 16 in 1939); 39 are appeals from the King's Bench Division (71 in 1940 and 96 in 1939), two are from the Probate, Divorce and Admiralty Division (three in 1940 and nine in 1939), and 26 are appeals from county courts (21 in 1940 and 44 in 1939). It is interesting to observe that the shortage of barristers is even more pronounced than the diminution in High Court litigation and that a committee of the Bar Council has been formed to consider what deferments should be recommended to safeguard the efficient administration of justice.

CORONERS AND THE STATE.

WRITING from the Coroner's office at Stoke-on-Trent, Mr. Gerald Huntbach, in a letter to *The Times* of 3rd June, pleaded that coroners should be paid by the State and that the expenses of inquests should no longer burden local authorities. He stated that in the last half century coroners' inquests were a parochial affair, where all the circumstances leading up to the death of worthies under the King's Peace arose in the district over which a coroner had jurisdiction. The local authority, out of loyalty to the Crown, and with comforting pressure from s. 25 of the Coroners Act, 1887, became responsible for the expense of each inquest, and for the coroner's remuneration. Inquests to-day, the writer pointed out, must often be searching inquiries, breaking new and useful ground in the discovery of precautions which will save lives in many industrial occupations. Experts give evidence on all phases of mining, engineering, electrical dangers and countless modern developments, whereby Ministerial departments and the nation as whole benefit. Each important town has a large hospital, to which are borne from outside areas persons seriously injured by road or other accidents. The expenses of the medical and other witnesses may come to £5 or £6, and an inquest which the writer was holding that week would cost more. S.R. & O., 1941, No. 340, places the great responsibility of establishing proof of death of believed casualties through war operations upon coroners, and embarrasses coroner and local authority alike by saying that the local authority may make such payments for this extra work as the local authority may think fit. Proof of death, or proof of identity of a dead person, might cost up to £200 to establish in the High Court, but coroners are expected to do this for anything between a peppercorn and three guineas. A statutory fee could have been settled, and the Coroners' Society would have been glad to arrange a reasonable fee with the Home Office. Mr. Huntbach has made out a strong case for bringing the ancient office of coroner into line with the magistracy and subjecting it to central control, and, having regard to the important additional emergency duties of the coroner, it is a matter which deserves priority of consideration.

LIABILITIES (WAR-TIME ADJUSTMENT).

On 27th May the Liabilities (War-Time Adjustment) Bill was read a third time and passed, with amendments, by the House of Commons. According to the current issue of *The Law Society's Gazette*, the Council of The Law Society has made representations to the Lord Chancellor's Department with regard to various practical points which appeared to them to arise in connection with the new measure. With regard to the powers conferred on the court to allow the debtor to remain in possession of property, to postpone the realisation of any property, to vest in the debtor goods let under a hire-purchase agreement, to vary contracts into which the debtor has entered, to apply sums available from time to time for satisfaction of the debtor's liabilities and interest thereon, and to make provision for the maintenance of the debtor and his family, as well as other powers, the Lord Chancellor is to make rules dealing with these in greater detail. The Council of The Law Society has urged that it is important that creditors should be entitled to appear before the court when any of these matters are considered, and the Lord Chancellor's Department has replied that they agree with the Council's view and the point will be borne in mind when the rules are made. The department has also informed the Council that it will no doubt be possible for the Council to see the rules in draft before they are made. A further point which is to receive consideration, at the suggestion of the Council, is the desirability that one of the methods of publication of notice of liabilities adjustment proceedings should be by means of the establishment of a register or registers on the lines of those kept in bankruptcy proceedings, so that a creditor will be able to search the registers before embarking on any other proceedings against the debtor. The Council of The Law Society deserves the gratitude of the public as well as of the profession for the important services it has rendered in this respect.

DISSOLUTION.

The Japanese "incident" in China has been indirectly responsible for an appeal to the Judicial Committee of the Privy Council (*D. K. K. Kaisha* v. *Shiang Kee* (20th May)), raising a point which, though not novel, is of some interest, and may become increasingly so in these days of international upheavals. A steamship-owning company incorporated under the laws of China, with its head office at Chefoo, in the Chinese Province of Shantung, had one of its branches at Hong Kong. In 1939, on a petition by certain shareholders, the company was dissolved in China by a decree of the District Court of Chungking, Szechuen, the Supreme Court of China having conferred jurisdiction on that court to deal with the case of the company because at that time the Japanese were in military occupation of Shantung Province, and the Chinese courts there were unable to exercise their judicial functions. A little later the same shareholders also petitioned the Supreme Court of Hong Kong for the winding-up of the company in that Colony, where there were valuable assets, under the provisions of the Companies Ordinance of 1932. The legal principle applicable to the situation which emerged from the simple facts was that the company having ceased to exist by the act of the country (China), by whose acts and under whose laws it was made a juristic entity, must be treated as non-existent by all courts administering English law. This principle was recognised and applied in *In re Russian Bank for Foreign Trade* [1933] (1 Ch. 745; 77 Sol. J. 197), where Maugham, J. (as he then was), ordered a winding-up in this country of a Russian bank which had been dissolved by Russian legislation and which had a branch office in this country. There are also some cogent observations in this connection in the opinion of Lord Wright in *Lazard Bros.* v. *Midland Bank* ([1933] A.C. 289, at 297; 76 Sol. J. 888). The position in law in such circumstances has thus been made abundantly clear, and in the present case the Supreme Court of Hong Kong in fact adopted and followed the *Russian Bank* case, *supra*, as a precedent, and ordered the company to be wound up in Hong Kong. The Judicial Committee, whose judgment was delivered by Lord Romer, do not appear to have disagreed with that view, but they went on to point out that in truth no precedent was required in order to establish the power of the Hong Kong courts to make the order, because such power was expressly conferred by s. 313 (2) of the Companies Ordinance of 1932, which provided that "Where a company incorporated outside the Colony which has been carrying on business in the Colony ceases to carry on business in the Colony, it may be wound up as an unregistered company under this Part of this Ordinance, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated." As the company had ceased to exist it had necessarily ceased to carry on business in the Colony, and so the case clearly fell exactly within the section. It appears fairly probable, in these uncertain times, that this class of case will crop up more frequently, and this most recent judgment has useful value in putting the principle in a nutshell.

WAR DAMAGE: APPORTIONMENT OF CONTRIBUTION.

A question which has for some time been engaging the attention of solicitors conducting conveyancing business is that of apportioning the ultimate liability for contributions under the War Damage Act, 1941, between the vendor and purchaser of a contributory property. It will be remembered that the Council of The Law Society made representations to the Government before the passing of the Act on this among other matters, but the Government did not see its way to insert any special provision in the Bill. The Council suggested that the most equitable method of apportionment of ultimate liability for contribution would be to make it by reference to the proportionate parts of the risk period (i.e., 3rd September, 1939, to 31st August, 1941) during which the vendor and the purchaser were respectively covered. Later the Council announced that it was considering the drafting of a clause which might be inserted in contracts so as to deal with the difficulty. In the May issue of *The Law Society's Gazette* it is announced that the position is still under consideration by the Council, and it is hoped to include a full statement upon it in the June issue. The Council recommends, however, that in settling or revising contracts for the sale of land solicitors should insert provisions to deal specifically with the ultimate liability for contributions under the Act. The position, as was pointed out in "A Conveyancer's Diary" for 3rd May, 1941 (*ante*, p. 209), is that the instalments of contribution are liabilities accruing each 1st July by reference to facts existing on the previous 1st January. A vendor selling to-day after five-sixths of the risk period has expired would only be called upon to pay one instalment (i.e., one-fifth) of contribution. Obviously, as the writer pointed out, it will be even more important after next August, when the whole risk period will be past. Another difficulty in the way of drafting a completely satisfactory clause is the fact that under s. 22 of the War Damage Act, 1941, it is left open to the Treasury in certain circumstances at any future date, subject to Parliament's consent, to increase the number of instalments and the rate of contribution. This, together with the fact that the present Act is only a first instalment of legislation on the subject, and with the general risks of war, should make the task of the draftsman somewhat difficult.

LIMITATION OF SUPPLIES.

The Limitation of Supplies (Miscellaneous) (No. 11) Order, 1941 (S.R. & O., No. 700), does rather more than alter the quotas for certain classes of goods. It operates as from 1st June, and the general rules about application for registration remain in force except that a manufacturer omitted from the Register under the Limitation of Supplies (Miscellaneous) Order, 1940, or under the Limitation of Supplies (Miscellaneous) (No. 5) Order, 1940, must apply again under the new order. A wholesaler who has been omitted from the Register must make a fresh application for registration if at any time he commences the manufacturing or processing of controlled goods of any class, since this will be a natural alteration in the nature of the business carried on by him. A manufacturer who has been exempted on the ground that the value of any class of controlled goods which he has supplied did not exceed the prescribed monthly limit must nevertheless apply again for registration if in any month after the beginning of the Order he supplies controlled goods of any class to a value exceeding £100. Forms of application for registration are obtainable from the Industries and Manufactures Department, Board of Trade, Carlton Hotel, Bournemouth, and were returnable on completion to the department before 5th June, 1941. Failing to register before 15th June, or in the case of a person not then carrying on the relevant business, would disqualify the owner from carrying on the business after that date. The old order provided that a person who subjected materials (other than precious metals) not belonging to him to a process whereby controlled goods were produced should not be deemed to supply controlled goods when the goods were delivered to or to the order of the owner. The new order adds fur skins to the exception. It also revises the list of organisations to which goods of certain classes may be supplied without restriction. The right to transfer a quota with the consent of the Board of Trade is now no longer confined to the whole of that quota, but subject to such consent, may extend to part of a quota, provided that it is transferred to another registered person. The Board has issued general directions under the orders requiring, *inter alia*, that manufacturers who supply another registered person during the restriction period with controlled goods of a value exceeding by more than £1,000 the value of the goods of the same class supplied to that person in the standard period, should notify the Board within fourteen days of supplying the goods, specifying the name of the registered person supplied and the class and total value of the goods supplied during the standard and the restriction period. A similar obligation is imposed on retailers who are supplied by a registered person during the restriction period with controlled goods of a value exceeding by more than £1,000 the value of the goods of the same class supplied by that person in the standard period.

"THE SOLICITORS' JOURNAL."

The publishers very much regret the inconvenience caused to subscribers through the delay in publication of recent issues. Every effort has been made, and will continue to be made, to return as soon as possible to normal weekly publishing.

Criminal Law and Practice.

THE CONSUMER RATIONING ORDER, 1941.

FROM statements made in the daily Press when the clothes rationing scheme was first published, it appears that there is a certain amount of public misapprehension as to the criminal sanctions for enforcing the scheme. The impression conveyed was that there were few methods of enforcing the scheme in a criminal court, and the Board of Trade would be content to rely on the people's general sense of honour and *esprit de corps*.

That this is not the case is clear from a perusal of the order (The Consumer Rationing Order, 1941, dated 29th May, 1941, S. R. & O. 1941, No. 701). First of all, it should be observed that it is made under reg. 55 of the Defence (General) Regulations, 1939, and, under reg. 92, if any person contravenes or fails to comply with any of the regulations or any order, rule or byelaw made under any of the regulations or any direction given or requirement imposed thereunder, he is guilty of an offence against that regulation and, subject to any special provision, is liable to a maximum penalty of three months' imprisonment or £100 fine, or both, if summarily convicted, or two years' imprisonment or £500 fine, or both, if convicted on indictment.

As it is intended that the order shall be obeyed, it is framed in imperative terms, and disobedience to any part of the order is a punishable offence. It is clear, therefore, that it is an offence for a trader to supply any rationed goods otherwise than against the surrender of the appropriate number of coupons and in accordance with the provisions of the order. It is also an offence for a trader to supply rationed goods without the production by the purchaser of the ration document and the detaching of the appropriate number of coupons by the trader. There is an exception to this in the case of the supply of rationed goods ordered by post, in which case the trader is not permitted to supply the goods unless he has received from the customer the appropriate number of coupons signed on the back by the customer.

The above offences are not committed if rationed goods are supplied (*a*) under a Board of Trade licence, (*b*) to or for the execution of Government contracts, (*c*) by delivery outside or by exportation from the United Kingdom otherwise than in or to the Isle of Man, (*d*) to a local authority, or (*e*) to the Women's Voluntary Service for Civil Defence.

With regard to the further exemption of supplying rationed goods before 14th June, 1941, in pursuance of an order made before 29th May, 1941, where a process in the manufacture or making up of the goods has been carried out especially for the purposes of the order, it is important to observe that the exemption only applies where the trader has a note or memorandum of the order, and that note or memorandum must have been made before 29th May, 1941. In such a case the trader will be guilty of an offence if he has not the required note or memorandum.

It should be added here that in respect of all the offences created by the order, the consumer may be guilty of attempting to commit any of the offences created by the order or doing any act preparatory to its commission, contrary to reg. 90 of the Defence (General) Regulations, 1939. The order, however, makes it clear by express words that it is an offence to acquire rationed goods from a trader in circumstances in which the trader is prohibited from supplying them to him.

The order specifies a number of further offences which may be committed by the consumer. It is an offence to transfer a ration document or coupon except for the purpose of the surrender of coupons under the order, or under a Board of Trade licence. No customer may deposit and no trader may take any but the appropriate number of coupons upon ordering or acquiring rationed goods. Failure to use goods for a purpose or subject to a condition specified in a notice in writing issued by the Board of Trade as applicable to any ration document or coupon is an offence. The Board of Trade may issue directions for the delivery of ration documents or coupons to any specified person, and it is an offence to disobey such a direction.

For the purpose of enforcing the order any person authorised in writing by the Board of Trade or by a chief officer of Police may, on production of his authority, require any person in possession of any ration document or coupon to produce it to him, and may seize it if he has reasonable ground for believing it to be evidence of the commission of an offence against the order.

Among the consequential provisions it is interesting to see that it is an offence for a retail customer to make use of any ration document or coupon other than those issued to him or issued to a person for whose benefit the goods are being obtained. There is a similar offence in the case of manufacturers of unrationed goods who wish to obtain rationed goods in the course of their business, and traders may also be guilty of a similar offence. No trader may supply any rationed goods against the surrender of a coupon if he has reason to believe that it is being used in contravention of this provision. The order also creates a number of offences with regard to the supply of rationed goods to traders and to manufacturers of unrationed goods.

This short account of the main offences of general interest created by the order does not pretend to deal with its somewhat complicated provisions with regard to supplies to traders and manufacturers and the linking up of the order with the various Limitation of Supplies Orders. With regard to traders it should be specially noted that if a trader uses or appropriates rationed goods held by him for the purposes of his business for or to any other purpose, he is deemed to supply them to a retail customer.

The practicable enforceability of the order will be ensured in a similar manner to that under the Rationing Order, 1939, by requiring traders and persons carrying on business in the course of which rationed goods are acquired from traders, to keep books, accounts and records as specified in Board of Trade directions and to furnish any returns and information so specified. Powers of entry on premises are also given to persons authorised by the Board to require the production of books, accounts and documents, to inspect the premises and to take samples of rationed goods.

There is, therefore, little if any justification for assuming that the new rationing order is in any way more loosely framed or easier to evade than the Rationing Order, 1939.

Landlord and Tenant Notebook.

WEEKLY TENANCIES.

IF and when the Landlord and Tenant (War Damage) Bill, which was referred to in "Current Topics" in our issue of 24th May, becomes law, grantees of weekly tenancies will, for the second time, be able to rejoice in having an enactment devoted specially to themselves.

A weekly tenancy, while its grant is rarely attended by formalities of any description or by investigations as to title, falls completely within the definition of a "term of years absolute" contained in s. 205 (1) (xxvii) of L.P.A., 1925, which commences with the words "means a term of years (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal estate, and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption . . .; but does not include any term of years determinable with life or lives, etc.," and concludes with the words "and in this definition the expression 'term of years' includes a term for less than a year, or for a year or years or a fraction of a year or from year to year," thereby anticipating any doubt or misgiving as to the comprehensiveness of the general provision.

Weekly tenants have, as a class, long outnumbered all other classes; but it was comparatively recent that the question of what notice was necessary (in the absence of express agreement on the point) to determine their tenancies. It was, indeed, at one time suggested, on the analogy of the tenancy from year to year, that three and a half days' notice expiring with a week of the tenancy would suffice. Reference was made to this proposition by Lush, J., in the course of his judgment in *Queen's Club Garden Estates, Ltd.* v. *Bignell* [1924] 2 K.B. 117. What this case decided was that notice must expire with a week of the tenancy, and it was said that it must be a week's notice; but this left open the question "what constitutes a week's notice?" Fortunately, we were soon provided with authority on the outstanding question. In *Newman* v. *Slade* [1926] 2 K.B. 328 the issue depended on the validity or otherwise of a notice to quit on a Monday given on the preceding Monday, there being no doubt that the period of the tenancy was from Monday to Monday. Salter, J., having expressed the view that the simple point ought not to be complicated by any reference to yearly, quarterly or monthly tenancies, applied the rule described by Lindley, L.J., in *Sidebotham* v. *Holland* [1895] 1 Q.B. (C.A.), not to count the day *on* which the notice is given, but to count the day *for* which it is given.

In practice, one incident of the weekly tenancy which is almost a distinguishing feature is the rent book. In one case it is, in fact, a legal incident; for the first occasion on which a statute made special provision for weekly tenancies was when the Rent and Mortgage Interest (Restrictions) Act, 1938, enacted, by s. 6 (1): "Where the rent of a dwelling-house to which the principal Acts apply is payable weekly, it shall be the duty of a landlord to provide a rent book or other similar document for use in respect of the dwelling-house." For when passing various enactments, relating to housing, rates, and the restriction of increases in rent, Parliament has been conscious of the difficulty of making those whom it proposed to benefit themselves conscious of the benefits conferred, and aware not only of their rights but of their remedies. The Rent and Mortgage Interest Restrictions Act, 1933, s. 14 (1) (*b*), authorised regulations prescribing "the matters as to which notice is to be given to tenants of dwelling-houses to which the principal Acts apply by means of notices inserted in rent books and similar documents, and the forms of such notices"; but no obligation was imposed to supply or use a rent book or similar document, and the later enactment mentioned limits the duty, as we have seen, to landlords under weekly tenancies.

In practice again, the weekly tenant is apt to regard his rent book as a document of title rather than as a source of information about the address of the local Medical Officer of Health, or the amount of rates, or as a legal text-book; and there are rent books

on the market which purport to set out, usually on the inside of the cover, the terms of the tenancy. The question may one day be raised and gone into whether these terms bind the parties. The primary function of the document is, after all, to record the receipt of moneys paid; and it need not or does not come into existence until the first payment is made, which, in the case of a weekly tenancy, is one week after the tenancy has commenced; and its terms cannot be varied save by consent of both parties. The question is not purely an academic one, for I remember, when first reading the report of *Wilchick* v. *Marks & Silverstone* [1934] 2 K.B. 56, experiencing some surprise that the point was not more thoroughly investigated. The case was one in which a third party, injured owing to a defect in some "weekly property," established that a landlord, who in such cases reserved the right to repair and was aware of the defect, was liable as well as the occupying tenant. In support of his contention that the defendant landlord had the right to repair, he referred to the rent book. The landlord, while admitting the reservation, based his answer substantially on the absence of liability. And the way Goddard, J., looked upon the matter is as follows: "The terms of the letting, *except in so far* as they were contained in the rent book, were oral . . ."; and, later, "but in the terms of tenancy appearing in the rent book I find that it is provided that 'the landlord, his agent or workmen shall have permission to enter the premises at any reasonable hour to inspect same or execute any necessary repairs,' showing that they reserved to themselves the right of doing repairs to the premises. . . ." Granted that the terms of a tenancy may be partly oral and partly in writing, it seems a pity that no one raised the question whether the tenant, having first seen the latter "terms" a week after his term of years absolute had been in existence, would not have been fully entitled to refuse the landlord, his agent or workmen permission to enter the premises at any reasonable or unreasonable hour.

Our County Court Letter.

SON AS SERVICE OCCUPANT.

In *Turner* v. *Turner* recently heard at Halifax County Court, the claim was for possession of a house from the plaintiff's son. In 1938 the defendant had entered the employment of his father as a chimney sweep, but left the employment in August, 1940. The plaintiff's case was that no rent was paid or expected, as the agreement was that his son should live in the house as long as he worked for his father. Possession was required for another son, who was working for his father in place of the defendant. The defendant denied that he had occupied the house by virtue of his employment. He had spent about £50 on improvements and was willing to pay rent for the past and future periods. His Honour Judge Frankland held that there was no tenancy. An order for possession in nine months was made, subject to the payment of 10s. a week in the meantime.

DAMAGE BY RESTIVE HORSE.

In *McDonald* v. *Liverpool Co-operative Society and Another*, recently heard in the Liverpool Court of Passage, the plaintiff was a trader in fruit and vegetables and had left his pony and cart opposite a house. The second defendant then crossed the road with a bread van, the property of the first defendants, and stopped the vehicle with a clatter under the pony's head. This startled the pony, and the plaintiff sprang on to the van to obtain control but was thrown off. It was alleged that the second defendant's negligence, in his capacity of servant of the first defendants, was the cause of the injuries sustained by the plaintiff. The defence was a denial of negligence and it was contended that there had been no unusual noise. The stoppage of the bread van had given rise to no more than the usual street noise. The conduct of the plaintiff's pony had been unusual. The deputy presiding judge, Mr. B. R. Rice-Jones, gave judgment for the defendants, with costs. See *Aldham* v. *United Dairies (London), Ltd.* [1940] 1 K.B. at p. 509.

HARDSHIP TO INVALID LANDLADY.

In a recent case at Bromyard County Court (*Westwood* v. *Edwards*) the claim was for possession of a house, and for £25 14s. as arrears of rent and mesne profits. The plaintiff's case was that she was a chronic invalid and had been bed-ridden for seven years. As she was residing in Chichester, where she was exposed to risk of enemy action, the premises at Bromyard were reasonably required for her own use, especially as her sister would then look after her. The defendant's case was that she was living apart from her husband and she had five lodgers (viz., two voluntary evacuees and three children) in the house, as well as her son aged 14 years. No alternative accommodation was available, and an offer of 5s. a week towards the arrears was made. His Honour Judge Roope Reeve, K.C., held that it would be a greater hardship to refuse the order than to grant it. An order was made for possession in two months, the defendant to pay 15s. a week for use and occupation, and the arrears and mesne profits at the rate of 10s. a month, and costs.

DEBTOR'S USE OF TRUST FUNDS.

In a recent case at Shrewsbury County Court (*In re Owen*), a trustee under a deed of assignment applied for directions as to the disposal of certain funds in his hands. The deed was executed in April, 1938, and the trustee had collected the debtor's assets. Three of his brothers, however, each claimed £100 of the funds available for distribution among the creditors. The evidence was that an uncle of the four brothers had bequeathed £400 to them, subject to the life interest of another person. The debtor had used the £400 for his own purposes, e.g., he had spent £212 on repairs to property, and this left £188 unaccounted for. The ingoing of a farm, however, had cost the debtor £90, so that he had benefited from the trust fund to the amount of nearly £300. It was pointed out for the respondents (the debtor's three brothers) that the trustee stepped into the shoes of the debtor, and the creditors under the deed of assignment would have the benefit of the £300. It was impossible to identify any part of the property as representing any part of the £300, and the three brothers were accordingly prejudiced. His Honour Judge Samuel, K.C., made an order that no part of the money in the hands of the trustee formed any part of the estate of the debtor's late uncle. As the brothers had been indulgent to the debtor, and had not insisted on their rights, the trustee was awarded the costs of the application.

SALE OF ORNAMENTAL GATES.

In *Kendrick* v. *Boot*, recently heard at Worcester County Court, the claim was for £176 18s. 6d. as damages for conversion of an ornamental iron gate and stone pillars. The plaintiff's case was that in April, 1939, an auction sale had been held of certain property at Witley Court. The conditions of sale stipulated that the vendor reserved the main entrance gates, stone pillars and iron railings. The plaintiff accordingly pointed out to the auctioneer that his offer of £450 for the lodge was conditional on the lodge gates and stone pillars forming part of the purchase. The latter was completed on the 29th November, 1939, and on the 6th December, 1939, the defendant purchased the main entrance gates, as reserved in the catalogue. In January, 1940, the defendant's employees removed also the gate and pillars of the lodge bought by the plaintiff. It was impossible to replace them with the same kind of material, and an oak gate and brick pillars had had to be substituted. The gate only led to a paved yard, behind the lodge, and could not be described as part of the main entrance gates. The gate, however, had been of wrought iron and a new gate would have cost £60. New pillars, similar to those removed, would have cost £106 18s. 6d. The defendant's case was that he had bought the gate and pillars, with other gates, pillars and fencing, for £100. The gate was in bad repair and worth £5, and a new one would only cost £25. The value of the pillars, when new, was £62 7s. 10d. His Honour Judge Roope Reeve, K.C., held that the gate and pillars, although forming part of the whole front, could not be said to be included in the main entrance gates. Judgment was given for the plaintiff for £100 and costs.

THE CONTRACTS OF DOMESTIC SERVANTS.

In *Carthew* v. *Coates*, recently heard at Woodbridge County Court, the claim was for damages for breach of contract. The plaintiff's case was that in September, 1940, her domestic staff consisted of a cook, a housemaid, and the defendant who was a betweenmaid. The cook had had to leave at short notice and the plaintiff's husband had had to enter a nursing home. In October he was ready to return, but, while at the nursing home, the plaintiff received a telephone message from the deputy cook that the defendant and the housemaid had both left without notice. The defendant's wages were £27 per annum plus washing and half insurance. As she had expressed a desire to learn cooking, the plaintiff had paid for her to have lessons. His Honour Judge Hildesley, K.C., gave judgment for one month's wages—£2 5s., and fees for cookery lessons—10s.; less: insurance 1s. 3d. and fares to lessons 1s. 5d., viz., a total of £2 12s. 4d. payable at £1 per month. It transpired that proceedings had also been taken against the housemaid, who had paid the amount claimed into court.

ASSAULT ON BAILIFF.

In a recent case at Colchester County Court a judgment debtor's wife was summoned under Order XXXIV, r. 1 (1), to show cause why an order should not be made under the County Courts Act, 1934, s. 31, for the payment of a penalty not exceeding £5 for assaulting an officer of the court while in the execution of his duty. The bailiff's evidence was that, after taking walking possession of a cow, he had gone to collect it on the 6th December, 1940. The judgment debtor became abusive, and his wife rushed at the bailiff and pushed him back. The bailiff was not hurt, but, as pointed out by the Registrar, the officers of the court (unlike policemen) wore no uniforms, and they required the protection of the court. The respondent was unable to appear and sent a medical certificate. Her plea (by letter) was that she had merely raised her hands in asking the bailiff to listen to her. His Honour Judge Hildesley, K.C., held that there had been an undoubted interference and a technical assault. A fine was imposed of £2. It is to be noted that, under the above section, a bailiff can arrest an offender without a warrant.

To-day and Yesterday.

LEGAL CALENDAR.

9 June.—An extraordinary feud between George Fitzgerald and Patrick M'Donald, two gentlemen of Castlebar, shocked all Ireland in 1786. The former pursued the latter with the most implacable desperation, first causing him to be shot at and wounded and later obtaining a warrant against him from a magistrate. Finally, when he had virtually driven his enemy into hiding he and his men succeeded in surrounding a house where he had taken refuge with two friends. Once he was in their power the rest was simple. Under pretence that a rescue was being attempted they shot M'Donald and one of his friends dead and wounded the other. Soon after, the military surrounded Fitzgerald's house and he was arrested. He was tried for his life on the 9th June, convicted and sentenced to death. With two of his accomplices he was hanged on the hill near the Castle at Castlebar.

10 June.—On the 10th June, 1684, Luttrell records in his diary: "Dr. Barebone, the great builder, having some time since bought the Red Lion Fields, near Gray's Inn Walks, to build on and having for that purpose employed several workmen to go on with the same, the gentlemen of Gray's Inn took notice of it and, thinking it an injury to them went with a considerable body of one hundred persons; upon which the workmen assaulted the gentlemen and flung bricks at them and the gentlemen at them again. So a sharp engagement ensued, but the gentlemen routed them at last and brought away one or two of the workmen to Gray's Inn; in this skirmish one or two of the gentlemen and servants of the house were hurt and several of the workmen."

11 June.—On the 11th June, 1759, there took place "a remarkable trial in the Court of King's Bench at Dublin when the Right Hon. the Earl of Belvedere obtained a verdict against Arthur Rochford, Esq., his brother, for £20,000 damages, besides costs, for criminal conversation with his lordship's lady. This transaction happened about fifteen years since."

12 June.—At Cambridge the Judges of Assize are lodged in the Master's Lodge at Trinity, though the College has often protested against the immemorial burden. The contest with the Crown became acute in 1866 after the Master and Fellows had been compelled by the intervention of the Home Secretary to retreat from the position of actually refusing to receive Mr. Baron Martin. On the 12th June, 1866, an agreement was signed whereby "in order to prevent any misunderstanding," they conceded that the Judges of Assize, whenever they held Courts for the Town and County of Cambridge, should have the use of certain specified apartments "together with such allowances as they have heretofore received out of the Steward's office." These were the Senior Judge's Room and dressing-room, the Junior Judge's Room and dressing-room, the large dining room, the servants' hall, the Judges' kitchen, the Judges' Cellar, the Judges' Steward's Room.

13 June.—On the 13th June, 1732, John Waller was killed by the mob as he stood in the pillory at Seven Dials. He had been convicted of bringing a false accusation of highway robbery against a man who had subsequently been acquitted of the offence. It was established that it had been his practice to follow the circuits and bring charges against innocent persons to get rewards. He was condemned to two years' imprisonment and to stand twice in the pillory bareheaded with his crime written in large characters displayed. It was equivalent to a death sentence.

14 June.—Mr. Justice Powell died at his house at Gloucester on the 14th June, 1713.

15 June.—On the 15th June, 1730, Serjeant Lee took his seat as a Judge of the Court of King's Bench. He had been appointed at the special request of Chief Justice Raymond, who found in his puisnes a considerable deficiency in the art of special pleading. He remained in this position for seven years, rendering very useful public service. He gave his opinion with modesty and discretion, without seeking to make a parade of his own knowledge. He would assist his brethren by a whisper and was likened by the knowing to the helm which keeps the ship in her course without attracting any notice. In 1737 he became Chief Justice.

The Week's Personality.

In the Lady Chapel in Gloucester Cathedral you may see the monument of Mr. Justice Powell. There stands his statue just as he must have been when Dean Swift described him as the merriest old gentleman he ever saw, speaking pleasant things and chuckling till he cried again. His father was Mayor of Gloucester and he was born there in 1645. Called to the Bar at the Inner Temple in 1671, he was elected town clerk of his native city in 1674 and represented it in Parliament in 1685. He was raised to the Bench as a Baron of the Exchequer in 1691 and knighted. Four years later he was transferred to the Common Pleas and finally, just after the accession of Anne, he was promoted to the Queen's Bench. Everything you hear of him is good—his distinction as a lawyer who could ably second the great Chief Justice Holt, the universal esteem in which he was publicly held and the respect he earned in his private life. One characteristic story of him is worth repeating. A woman was tried before him for witchcraft, charged with being able to fly, and when asked whether it was true, she replied in the affirmative. "Well, then, you may," he said, "there is no law against flying." And so she was acquitted.

The Battle of the Organs.

Ironically enough a German masterpiece has perished in the conflagration of the Temple Church—the organ built by Bernard Schmidt or Father Smith. The story of the hesitations, controversies and acrimony which preceded its selection must be a warning hereafter to all who have to decide upon matters of æsthetic importance. When in 1682 the Benchers of the two Temples decided that their church must have an organ of superlative excellence they approached the two foremost organ builders, Schmidt and Renatus Harris, undertaking that "if each of these excellent artists would set up an organ in one of the halls belonging to either of the Societies, they would have erected in their church that which, in the greatest number of excellences, deserved the preference." In fourteen months the two instruments were ready for the competition, but instead of being set up in one of the halls they were both placed in the church. Then began an astonishing duel. Schmidt's organ was handled by Purcell and Dr. Blow, and that of Harris by Draghi, the Queen's organist. Party feeling began to appear and wrangles broke out in every circle in town. Fashionable congregations crowded to the performances and the selection committee could come to no decision. A diversion was created when, on the challenge of Harris, Schmidt made a number of additional reed-stops. Then after a day had been appointed for the renewal of the contest, the partisans of Harris cut Schmidt's bellows and left his instrument voiceless. When this outrage was known debate rose high and swords were drawn. At last the Benchers of the Middle Temple lost patience and made a written declaration in favour of Schmidt. The Inner Temple, of course, resisted this attempt at dictation and the matter simplified itself into a squabble between the two Societies. In the end it fell to the Lord Chancellor, Lord Jeffreys, to settle the matter, and though he had belonged to the Inner Temple he decided in favour of Schmidt. Part of Harris's organ was set up in St. Andrew's, Holborn, where it too has perished by fire in the attacks of the enemy.

Romilly's Chambers.

Gray's Inn Square is a desolation with more buildings destroyed than standing. Some damage has been done to No. 6 at the north-west corner where one of the Inn's most noble sons, Sir Samuel Romilly, had his first chambers as a student, a very pleasant set overlooking the gardens, where he said he "arranged my little collection of books about me and began with great ardour the painful study of the law." In a letter to his sister in Switzerland he told her how "the moment the sun peeps out I am in the country. A cold country it is, for having only one row of houses between me and Hampstead and Highgate, a north-west wind (sharp as your piercing *bise*) blows full against my chambers." When he had been a member of the Inn for two years, the mob in the Gordon Riots threatened the Inn with the fate which has now overtaken it, swearing to lay it in ashes, and on those June nights in 1780, while houses blazed in Holborn, Romilly stood on guard with the other barristers and students. The Inn which he knew must rise again.

LAW ASSOCIATION.

The monthly meeting of the directors was held on the 3rd June, Mr. John Venning in the chair. The other directors present were Mr. E. Evelyn Barron, Mr. C. A. Dawson, Mr. Ernest Goddard, Mr. G. D. Hugh-Jones, Mr. A. E. Clarke, Mr. F. S. Pritchard and the secretary Mr. Andrew H. Morton.

The sum of £1,031 was voted in renewal of allowance to pensioners and grants amongst twenty-five applicants, and other general business was transacted.

ASSIGNMENT OF PAYMENTS IN RESPECT OF WAR DAMAGE.

Under s. 9 (7) of the War Damage Act, the right to receive a payment in respect of war damage is transmissible by assignment subject to approval in writing by the Commission. We find on inquiry at the War Damage Commission Office that the Commission has decided not to approve such assignments freely. They are prepared to approve them only in certain special circumstances, such as when the parties had a previous fiduciary or contractual relationship, direct or indirect, in the property (e.g., landlord and tenant or sub-tenant) or where the assignee is a Government Department or a Public or Local Authority.

Mr. Alfred William Burt has been appointed Keeper of the Central Criminal Court in succession to Mr. H. Harrison, who was killed at his home during an air raid. Mr. Burt has been in the service of the City of London Corporation at Guildhall for 39 years.

Practice Notes.

LEAVE TO PROCEED: NO WAIVER PERMITTED.

"PARLIAMENT has deliberately restrained the creditor from proceeding until the leave of the court has been obtained by him, and we see no warrant for holding that the consent of the debtor can relieve him of that obligation."

Thus, Goddard, L.J., in the important decision of *Bowmaker, Ltd.* v. *Tabor* [1941] 2 All E.R. 72, 76, 77; Scott and MacKinnon, L.JJ., agreed. Conditional leave was granted to appeal to the House of Lords.

The company had let a motor car to the defendant on hire-purchase terms. The price was £443 11s. The first instalment was £88 2s. 6d.; the balance was payable by twenty-four monthly instalments of £14 16s. 2d. By March, 1940, Tabor had paid £268, but owed £64. Being pressed for the arrears, he agreed to surrender the car and signed a form declaring that it was his "desire" "voluntarily to terminate the hiring" and to surrender the car. The company subsequently sued him for £64 under their rights conferred by the agreement. He failed in his defence that if he signed the agreement, his arrears would be forgiven. Upon his counter-claim for damages, however, he won; the company had retaken the vehicle without the leave of the court under the Courts (Emergency Powers) Act, 1939, s. 1 (2) (*a*) (ii). They had exercised a remedy by taking possession of property. (See Note 4, Krusin and Rogers, *War Legislation*, p. 12, submitting this view.) Farwell, J.'s decision in *Soho Square Syndicate, Ltd.* v. *Pollard (E.) & Co., Ltd.* [1940] Ch. 638.

Now the hire-purchase agreement provided that the hirer might at any time determine the hiring by returning the car at his own risk and cost to the owners at such address as they might appoint in good condition and repair, with the registration book and licence and insurance certificate; such termination was not to be complete, however, until the documents had been delivered up. If this, in fact, was what the hirer had done, no leave of the court would have been required. "There is nothing in the Act to prevent a hirer from returning goods he has hired without the leave of the court," said Goddard, L.J. (at p. 74). But in the present case, what Tabor did was simply to assent to the company exercising its right to retake the car.

Can the parties then, *by consent*, dispense with the necessity of the owners obtaining leave to retake the property? Can they *contract out* of the Act, or can the defendant *waive his right to object* that no leave to proceed has been obtained?

In the present case, the parties did not endeavour to contract out of the Act; the defendant merely consented to the plaintiffs' exercising their contractural right of seizure. But whether the case were one of contracting out, or of waiver, the principles were the same, said Goddard, L.J.

> "Everyone may waive the advantage of a law made solely for the benefit or protection of an individual in his private capacity, but this cannot be done if the waiver would infringe a public right or public policy" (at p. 76).

Thus, a debtor may waive the Statute of Limitations. For an exposition and illustration of the principle, see Broom, *Legal Maxims* (1939) 10th ed., pp. 477-482. The Latin maxim contains the relevant qualification; it is not out of date and its quotation may not be out of place: *Quilibet potest renunciare Juri pro se introducto.* "The words *pro se* were introduced," says the note (at p. 477 (b)) to show that no man can renounce a right, of which the claims of society forbid the renunciation (*per* Lord Westbury in *Hunt* v. *Hunt*, 31 L.J., Ch. 161, at p. 175). Thus, an infant, sued upon coming of age, on a voidable debt, may waive the offence. Notice of dishonour may be waived. On the other hand, the maxim is inapplicable "where an express statutory direction enjoins compliance with the forms which it prescribes" (*op. cit.*, at p. 481). Thus, a testator cannot dispense with the formalities essential to the validity of a will, introduced for the benefit of the public and binding on all.

Next, there is the operation of the Courts (Emergency Powers) Act, 1939. The debtor is not, in terms, protected; the creditor is merely restrained from enforcing his remedies (speaking generally), without the leave of the court. The debtor may, in fact, receive protection; but often the creditor will receive unconditional leave to proceed.

> "The terms of the Act are peremptory, and there is certainly nothing in it to suggest that the Legislature contemplated that an application to the court might be dispensed with in any circumstance" (*per* Goddard, L.J., at p. 76 of [1941] 2 All E.R.).

Even if the debtor does not appear, it may be manifest that the debtor's inability to pay has arisen through the war, e.g., the debt of a soldier on active service, upon a hire-purchase of furniture where nearly all but the last two instalments were paid and the man had then been called up. The onus of applying for relief is not upon the debtor; it is for the creditor to apply for leave to proceed. Then follow the words quoted at the head of this article. It is just because debtors may be ignorant of the Act, said Goddard, L.J., that it is for the creditor to obtain leave. If this leave could be dispensed with by consent, such dispensation might become general and would conflict with "the obvious policy which Parliament had in mind."

For another reason, "consent cannot dispense with the necessity of an application to the court" (at p. 77). For if it were permitted to contract out of the Act, or to waive its provisions, a judgment creditor could, with consent, proceed to execution. But it has been held—and is now so declared by the amending Act of 1940—that, before giving leave, the court must consider *all* the debtor's liabilities, in order (in the words of Scott, L.J., in another case) "to endeavour to do a measure of distributive justice" (referred to by Goddard, L.J.). But if one creditor induced the debtor to waive the provisions of the Act, there might be nothing left for the other creditors. The opinion expressed by Sargant, J., in *Re Sandow* [1916] W.N. 262, was not binding on the Court of Appeal.

> "Neither contract nor waiver will excuse a creditor from observing the provisions of the Act" (at p. 77 of [1941] 2 All E.R.).

Nor did the maxim of *volenti non fit injuria* apply so as to disentitle the hirer to damages, where there has been a disregard of a statutory obligation (*Thomas* v. *Quartermaine* (1887) 18 Q.B.D. 685).

Where a hirer, therefore, has paid a substantial sum in instalments, and subsequently returns the chattel, the court should ascertain whether the return is a *bona fide* exercise of the contractual option or merely a submission by the hirer to the owner's right of seizure (at p. 78, *per* Goddard, L.J.).

In a short and succinct judgment MacKinnon, L.J., pointed out that if the appellants were right, the protection of the Act would cease for "a humble and submissive debtor," and would only avail "one who is astute and assertive of the benefit given him by the Act."

> "The protection given by the Act against coercion will disappear in every case in which coercion is applied with sufficient vigour to make the man intended to be protected admit that he is not" (at p. 79).

Prima facie, the appellants took possession without leave of the court. Consent of the respondent is no answer. Of any contract to forgo the benefit of the Act there was no evidence. To say: "The respondent was so faint-hearted or ignorant that he consented to our doing what we did," is no excuse, concluded MacKinnon, L.J.

War Legislation.

STATUTORY RULES AND ORDERS, 1940-1941.

E.P. 2222. Removal of Offices (Land Registry) Order, November 15.
E.P. 718. Delegation of Emergency Powers (Northern Ireland) (No. 2) Order, May 19.
E.P. 743. Defence (General) Regulations, 1939. Order in Council, May 30, adding Regulations 62 AA and 62 BB and amending Regulations 27, 29B and 32.
No. 698. National Health Insurance (Approved Societies) Amendment Regulations, April 17.
No. 699. War Damage (Business Scheme) (No. 2) Order, May 19.
No. 728. War Risks (Commodity Insurance) (No. 3) Order, May 27.

Books Received.

Palmer's Examination Note Book for Accountancy and Secretarial Students. By Alfred Palmer, A.S.A.A., F.C.C.S. Second Edition, 1941. Demy 8vo; pp. (including Index) 199. London: Gee & Co. (Publishers), Ltd. Price 10s. 7d., post free.

Mew's Digest of English Case Law. Quarterly Issue, April, 1941. By G. T. Whitfield Hayes, Barrister-at-Law. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.

The War Damage Act, 1941. By H. Samuels, M.A., of the Middle Temple, Barrister-at-Law. Demy 8vo, pp. 245 and (including Index) 259. London: Sir Isaac Pitman & Sons, Ltd. Price 10s. 6d.

The Way to Justice. A primer of legal reform by Heber L. Hart, K.C., LL.D. 1941. Crown 8vo; pp. (including Index) 146. London: Geo. Allen & Unwin, Ltd. Price 5s. net.

Wills and Bequests.

Mr. W. C. MORTIMER, solicitor, of Austin Friars, E.C., for many years on the Council of the Law Society, left £66,617, with net personalty £50,224.

Mr. BASIL BERNARD WATSON, K.C., North London magistrate, left £73,026, with net personalty £72,057.

Notes of Cases.

CHANCERY DIVISION.

In re **an Application by Midland Bank, Ltd.**

Morton, J. 2nd May, 1941.

Emergency legislation—Mortgage—Mortgagor under no personal liability to pay debt—Application by mortgagee for leave to exercise powers—Necessity for application—Courts (Emergency Powers) Act, 1939 (2 & 3 *Geo.* 6, *c.* 67), *s.* 1 (2) (4).

Motion.

By a deed of mortgage made the 5th May, 1937, between L. (since deceased) and the applicant of the one part and the Midland Bank of the other part in consideration of the bank continuing advances to L., Ltd., the principal debtor, L. and the applicant mortgaged certain property to the bank to secure such advances. The mortgage contained no covenant by the applicant to pay the sums secured. On the 17th January, 1941, the bank issued an originating summons, under the Courts (Emergency) Act, 1939, asking that they might be at liberty to proceed to exercise any remedies which might be available to them by way of the appointment of a receiver and the realisation of the property comprised in the security. The applicant, as the surviving mortgagor, was the respondent. On the 17th March, 1941, the master made an order granting leave. He took the view that the applicant was not entitled to the protection of subs. (4) of s. 1 of the Act as he was not the person liable to perform the obligation in question within the subsection. In so holding, he followed Farwell, J.'s decision in *In re National Provincial Bank, Ltd.*, (1941), 85 Sol. J. 10. By this motion the applicant asked that the master's order might be reversed.

Morton, J., said that reading the mortgage as a whole the applicant was not under any personal liability for the payment of the money secured. The result, therefore, was that the case was indistinguishable from *In re National Provincial Bank, Ltd.*, *supra*, and subs. (4) of s. 1 of the Act gave no protection to the applicant. The applicant's second point was that the order of the master was not the same as the order of Farwell, J., who had dismissed the application, and had not granted the mortgagee leave to exercise his powers. It was plain from the judgment in that case that it was argued on the footing that, if the mortgagor could not bring himself within s. 1 (4), there was no need for the mortgagee to apply for leave to the court. There was no doubt but that, if his attention had been drawn to s. 1 (2), which makes it obligatory on a mortgagee to obtain the leave of the court before realising his security, Farwell, J., would not have expressed the view that no leave was necessary. Accordingly, it was right in the present case to grant to the applicants leave to exercise their remedies. The application must be dismissed with costs. A further aspect of the matter arose, namely, whether, if the court was satisfied that L., Ltd., the principal debtors, were unable to pay their debts by reason of circumstances attributable to the war, relief could be given under subs. (4) to the applicant. He, the learned judge, was satisfied that the only person to whom relief could be given under the subsection was the person liable to perform the obligation in question. The present case was a *casus omissus* which might cause considerable hardship.

Counsel: *I. J. Lindner; A. Guest Mathews.*

Solicitors: *Page, Moore & Page; Beale & Co.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

In re **Robb's Contract.**

Simonds, J. 7th May, 1941.

Revenue—Conveyance on trust for sale—Stamped ten shillings—Stamp not adjudicated—Whether purchaser entitled to require adjudication—Finance (1909-1910) *Act*, 1910 (8 & 9 *Edw.* 7, *c.* 8), *s.* 74.

Vendor and purchaser summons.

By a conveyance dated the 31st March, 1932, D. as settlor, conveyed to trustees certain land upon trust to sell the same and to hold the net proceeds upon the trusts declared concerning the same by a settlement intended to bear even date with the conveyance. The deed contained a trustee charging clause, a power to mortgage, and was stamped ten shillings only. The stamp was not adjudicated. The respondents, having entered into an agreement for the sale of the property to the applicant, the applicant sent in a requisition requiring the respondents to have the stamp on the conveyance of 1932 adjudicated. The respondents refused to comply with this requisition, and the applicant took out this summons.

The Finance (1909-10) Act, 1910, provides that any conveyance operating as a voluntary disposition shall be chargeable with the like duty as a conveyance on sale. Subsection (2) provides that the Commissioners may be required to express their opinion under s. 12 of the Stamp Act, 1891, on any conveyance operating as a voluntary disposition "and no such conveyance on transfer shall be deemed to be duly stamped unless the Commissioners have expressed their opinion thereon in accordance with that section." Subsection (6) provides that "a conveyance . . . under which no beneficial interest passes in the property conveyed . . . shall not be charged with duty under this section."

Simonds, J., said that two questions were argued, namely, first, whether the conveyance was an instrument under which no beneficial interest passed so as to fall within subs. (6) of s. 74, and, secondly, whether, if so, it was subject to the provisions of subs. (2) and must nevertheless be submitted for adjudication. With regard to the first point, until the settlement of even date was executed no beneficial interest would pass and there was a resulting trust for the settlor. Accordingly, the conveyance fell with subs. (6). With regard to the second question, that must also be answered in the affirmative. The deed was a conveyance operating as a voluntary disposition *inter vivos* within subs. (1). The language of subs. (2) was comprehensive. It was argued that subs. (6) must be read as taking such instruments outside the section so that they were neither chargeable with duty nor subject to adjudication under subs. (2). This argument could not prevail. It was agreed that under s. 74 *ad valorem* duty had to be paid either on the conveyance or the trust instrument. If the vendor was able to stamp the conveyance with a ten-shilling deep stamp only, a purchaser had no means of knowing whether *ad valorem* duty had been paid at all. The Revenue would thus lose a valuable safeguard afforded by a purchaser's duty to make requisitions in regard to stamps. It was right that the Commissioners should for the purposes of adjudication be in a position to investigate the circumstances which it was alleged afforded an exemption from *ad valorem* duty. He would accordingly declare that the requisition had not been sufficiently answered.

Counsel: *Norman Baynes*, K.C., and *C. A. J. Bonner; Neville Gray*, K.C., and *G. D. Johnston.*

Solicitors: *Evill & Coleman; Fladgate & Co.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

In re **Scad, Ltd.**

Uthwatt, J. 26th May, 1941.

Company—Voluntary winding-up—Company dissolved 3rd April, 1939—*Proceedings by Attorney-General to have dissolution declared void started on the 31st March*, 1941—*Application heard on the 26th May*, 1941—*Jurisdiction—Companies Act*, 1929 (19 & 20 *Geo.* 5, *c.* 23), *ss.* 236, 294.

Motion.

S., Ltd., was incorporated in March, 1938, as an investment company. Its sole income arose under a deed of covenant dated the 29th March, 1938, whereby M. covenanted to pay to the company £125 per week. In October, 1938, a special resolution was passed for the voluntary winding-up of the company and M. was appointed liquidator and a declaration of solvency made. A general meeting of the company was called for the 2nd January, 1939. At that meeting there was no quorum and accordingly the company was deemed to be dissolved on the 3rd April, 1939, pursuant to s. 236 of the Companies Act, 1929. On the 13th March, 1939, the company was assessed to National Defence Contribution. The company appealed from this assessment. This appeal stood over pending the hearing of certain other appeals based on similar grounds, which were ultimately decided in favour of the Crown. By this motion the Attorney-General, on behalf of His Majesty as creditor of the company, asked that the dissolution might be declared void. The notice of motion was issued on the 31st March, 1941, and came on for hearing on the 26th May, 1941. Under s. 294 (1) of the Act, where a company has been dissolved "the court may at any time within two years of the date of the dissolution" make an order declaring the dissolution void.

Uthwatt, J., said that the case raised the short point whether, upon the true construction of s. 294 of the Act, the jurisdiction to make an order could only be exercised if the order was in fact made within two years of the date of the company's dissolution. Having regard to the fact that neither litigant could control the date at which the court made its order, the two years was to be taken from the date of dissolution to the date when an application was started. Accordingly, the court had jurisdiction to make an order in this case, and he made the order asked for by the Attorney-General.

Counsel: *J. H. Stamp; Gedge.*

Solicitors: *Solicitor of Inland Revenue; Ashurst, Morris, Crisp and Co.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

CHANCERY DIVISION.

Re **Rowe: Bennetts** *v.* **Eddey.**

Farwell, J. 15th May, 1941.

Will—Construction—Bequest of pecuniary legacies—personalty insufficient to pay legacies—whether legacies payable out of realty—Rule in Greville v. Browne—Administration of Estates Act, 1925 (15 Geo. 5 c. 23), s. 34 (3); First Schedule Part II. para 2.

Adjourned summons.

The testator by his will dated the 3rd November, 1938, after bequeathing a number of pecuniary legacies, provided: "I devise all my real estate and bequeath all the residue of my personal estate to P. & D. in equal shares." The Testator died in 1939. The greater part of his estate consisted of realty, the personalty being insufficient to pay the pecuniary legacies in full. This summons was taken out by one of the executors of the will asking

whether the pecuniary legacies were payable exclusively out of the personal estate or were also payable out of the realty.

FARWELL, J., said before the Administration of Estates Act, 1925, came into operation the pecuniary legatees could not have looked to the real estate for any part of the payment of the legacy. Under the rule in *Greville* v. *Browne*, 7 H.L.C. 689, real estate was not liable for the payment of legacies, unless the testator had made a mixed fund or given the real and personal estate in one mass to the residuary pecuniary legatees. It was said that the effect of s. 34 (3) and para. 2 of Part II of the First Schedule of the Administration of Estates Act, 1925, was to alter the law and to substitute a new provision under which pecuniary legacies were charged not only on the residuary personal estate but on the real estate as well. Clauson, J., had held that s. 34 (3) and paras. 2 and 8 (*b*) of Part II of the First Schedule of the Act had not altered the law and the personal estate must be treated as the fund primarily liable for payment of annuities and legacies. *In re Hobson Thompson* (1936), Ch. 676. That decision had some bearing on the present question. He had come to the conclusion that the Administration of Estates Act, 1925, had not altered the law. This was in accordance with the principle adopted by Clauson, J. The rule laid down in *Greville* v. *Browne* applied, and accordingly the legacies were payable only out of the personalty.

COUNSEL: *J. A. Wolfe; Timins; R. W. Goff; Jennings.*

SOLICITORS: *Robbins, Olivey & Lake*, for *Boase & Bennetts*, Penzance; *Burton, Yeates & Hart*, for *Vivian Thomas & Son*, Penzance.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Corbett *v.* Duff; Dale *v.* Same; Feebery *v.* Abbott.

Lawrence, J. 26th March, 1941.

Revenue—Income tax—Football-players' benefits—Whether chargeable—Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), Scheds. D, E.

Appeals from decisions of Commissioners for the General Purposes of the Income Tax Acts.

The following facts appeared from the cases stated: The appellants, Dale and Corbett, played football for the Manchester City Football Club under an agreement which was subject to the regulations of the Football League, Ltd., of which the club was a member. By reg. 61 of those regulations the agreements between the club and its members might provide for a benefit match in favour of the player on certain terms. By reg. 63, when a club transferred a player to another club, the transferring club might pay him a percentage, to be calculated in accordance with the regulation, of the amount which the club had guaranteed, or would have been likely to guarantee, to him for a benefit match. Corbett received a payment of £200 under that regulation. Dale received £650 as a benefit under reg. 61. It was well understood among football players that if a player served a club for five years he was likely to receive a benefit match, and that if he were transferred before the end of that time he would receive an accrued share of benefit under reg. 63. Players asked for and usually received benefits, but there was no obligation on clubs to grant them. Feebery had been a popular and successful player in the first team of Notts County Football Club when, in his sixth year of employment, he was granted a friendly match as a benefit, as the financial position of the club did not permit of his being granted a league match. The directors of the club, while declining beforehand to guarantee to Feebery any sum in respect of the match, in fact made up the sum received to £350, which they then paid him. The General Commissioners having confirmed additional assessments to income tax made on the appellants in respect of the sums so received by them, they now appealed.

LAWRENCE, J., said that the appellants had contended that the sums in question were gifts and not paid in pursuance of any such formal agreement as provided for by reg. 61, and that they were analogous to the sum invested for the cricket player in *Seymour* v. *Reed* [1927] A.C. 559; 71 SOL. J. 488. The principle to be applied had been stated by Rowlatt, J., and Lord Cave in that case [1926] 1 K.B. 588 [1927], A.C. 559; and by Lord Loreburn in *Blakiston* v. *Cooper* [1909] A.C. 104; 25 T.L.R. 164. It was that, if the payment, although voluntary, was remuneration for the office or employment, it was taxable; but that, if it was personal in the sense that it was given to the person, not as a holder of office or employment but as a personal testimonial, it was not. The line was obviously often difficult to draw. The clergyman who was personally admired by his parishioners would probably receive larger Easter offerings than one who was not, and in that sense the gift was personal; but the occasion was annual and connected with the clergyman's office. Such a gift had therefore been held in *Blakiston* v. *Cooper*, *supra*, to be in respect of the office, and not a personal testimonial. If the occasion of the gift there had been the recipient's retirement, or his golden wedding, the decision would probably have been the other way. Here all the payments in question appeared to have been made in respect of, and as remuneration for, the appellants' employment, and were thus taxable. The payments, though not obligatory, were expected, asked for, and usually granted. They were made after a certain number of consecutive years' service, and were stated in the regulations to be for loyal and meritorious service. In face of the terms of regs. 61 and 63 and of the understanding among professional football players, the payments must be held to have been made in respect of the appellants' employment. The appeals must be dismissed.

COUNSEL: *Goldie*, K.C., and *Leach*; *The Solicitor-General* (Sir William Jowitt, K.C.), and *Hills*.

SOLICITORS: *Turner, Osborn & Chatterton*, for *T. H. Hinchcliffe and Son*, Manchester; *The Solicitor of Inland Revenue*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Haseldine *v.* Daw and Others.

Hilbery, J. 26th March, 1941.

Negligence—Plaintiff visiting tenant in block of flats—Injured through defective lift—Gratuitous carriage by landlord—Landlord under duty of care to provide safe lift—Accident caused partly by negligent repair-work to lift—Repairer liable.

Action for damages for negligence.

The plaintiff had occasion to visit the tenant of a flat in a block of flats owned by the first defendant. The flat to be visited being on an upper floor, the plaintiff entered the lift which was operated by the first defendant's servant. While the lift was travelling upwards part of its mechanism gave way and the lift fell to the bottom of the well, the plaintiff receiving the injuries in respect of which the action was brought. The first defendant himself entered into the tenancy agreements in respect of the flats and was the occupier of the lift and common staircase. He formed a company which managed the property generally, collected the rents and entered into the agreement with the third defendants under which the lift was maintained. That agreement provided for monthly visits by the third defendants for the purpose of adjustment, cleaning and lubrication of the mechanism of the lift which was of the water-operated hydraulic type, and for a report to be furnished after each such visit. The first and second defendants did not choose to avail themselves of a contract whereby the third defendants, in consideration of a larger payment, would have undertaken the entire maintenance of the lift to include any repairs to the mechanism which they found to be necessary. The lift was installed in 1906 and during the eighteen years for which the third defendants had looked after it had never been dismantled and completely overhauled. In October, 1939, the second defendants, on behalf of the first defendant, complained to the third defendants of the slowness with which the lift descended. The third defendants accordingly made an inspection and conducted tests, which revealed wear in various parts of the mechanism, the details of which they communicated to the second defendants. That wear imposed an undue strain on an important water gland. The second defendants dealt with the difficulty by arranging for extra periodical visits by the third defendants at which they should grease certain worn parts. On the 25th April, 1940, the first defendant's insurance company reported the lift to be generally in good working order. On the 18th June, the day before the accident, the third defendants repacked one of the water glands of the lift, but their employee, as found by Hilbery, J., replaced it negligently, which negligent replacement combined with the effect of the wear in other parts of the mechanism to impose an undue strain on the gland and to cause it to fracture.

HILBERY, J., said that the plaintiff was not an invitee of the first defendant as occupier of the lift and common staircase. An invitee was a person visiting premises occupied by the invitor on business common to them. Where a landlord permitted access by staircase or lift to the tenants of flats let by him, himself remaining the occupier of the staircase or lift, those whom he permitted to enter the premises for that purpose were licensees: see *Fairman* v. *Perpetual Investment Building Society* [1923] A.C. 74, at p. 95; 39 T.L.R. 54. Applying the test set out in "Salmond on Torts" (9th ed., p. 514) and approved by MacKinnon, L.J., in *Ellis* v. *Fulham Borough Council* [1938] 1 K.B. 212, at p. 234; 81 SOL. J. 550, the plaintiff was clearly not the invitee of the first defendant. The first defendant's duty, therefore, was merely to warn the plaintiff of any danger of which he (the defendant) knew, and that defendant did not know that it was dangerous to passengers to operate the lift in the condition in which it was, being under the impression that the only result of that condition was that the lift travelled slowly. The claim against the first defendant as licensor or invitor therefore failed. It was then argued that the first defendant had undertaken to carry the plaintiff to the upper floor in the lift and that he therefore undertook towards him the duty of a carrier towards his passenger. It was replied for the first defendant that, the carriage being gratuitous, the first defendant's duty was merely that of a licensor, except that he undertook the additional duty of care in the actual driving and management of the lift. There was no material distinction between carriage of a passenger in a vehicle in the horizontal plane and such carriage in the vertical plane. In view of what Henn Collins, M.R., had said in *Harris* v. *Perry & Co.* [1903] 2 K.B. 219, at p. 225; 19 T.L.R. 537, and Blackburn, J., in *Austin* v. *Great Western Railway Co.* (1867), L.R. 2, Q.B. 442, at p. 445; it could not be that, where carriage was undertaken gratuitously, the duty assumed by the carrier was no more than that of exercising reasonable care in the conduct and control of the vehicle. The duty to transport with reasonable care must include

the exercise of such care in respect of the condition as well as of the management of the vehicle. The first defendant had not exercised reasonable care in the provision of a safe vehicle. The matters of which he was informed as explaining the slowness of the lift made it incumbent on him to direct his mind to the question whether those matters also constituted any danger in the use of the lift. He admitted that he had not done so. He could not discharge his duty of care by merely doing nothing after what he had heard, especially with a lift some thirty-five years old. He should have realised that what he had been told might imply danger to those using the lift. The plaintiff's claim therefore succeeded against the first defendant, although, in view of their particular position, not against his company, the second defendants. The third defendants were also liable for the negligence of their workman. The work to the lift was to be done in circumstances in which no examination could reasonably be anticipated as likely to take place between the completion of the work and the use of the lift by passengers. The principle in *Donoghue* v. *Stevenson* [1932] A.C. 562; 76 SOL. J. 396, as applied in *Grant* v. *Australian Knitting Mills, Ltd.* [1936] A.C. 85; 79 SOL. J. 815; *Stennett* v. *Hancock* (1939), 83 SOL. J. 379; *Herschthal* v. *Stewart & Ardern, Ltd.* [1940] 1 K.B. 155; 84 SOL. J. 79; and *Malfroot* v. *Noxal, Ltd.* (1935), 51 T.L.R. 551, showed that the repairer, like the maker, of an article might in particular circumstances place himself in a relationship to an ultimate user of the article so close as to give that user an enforceable right against the maker or repairer that the work on the article should be carried out with skill and care. Light was thrown on the subject by *Buckner* v. *Ashby & Horner, Ltd.* (1940), 85 SOL. J. 106; 57 T.L.R. 236. There must be judgment for the plaintiff for £750, to be borne in equal shares by the first and third defendants.

COUNSEL: *Wallington*, K.C., and *H. G. Robertson*; *Samuels*, K.C., and *Beney*; *Sellers*, K.C., and *Berryman*.

SOLICITORS: *Simmons & Simmons*; *Kenneth Brown, Baker, Baker*; *Carpenters*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Minister of Agriculture and Fisheries *v.* Price.

Viscount Caldecote, C.J., Humphreys and Singleton, JJ.
14th May, 1941.

Emergency Legislation—Agriculture—Direction to farmer by agricultural committee—Failure by farmer to comply—Information—No jurisdiction in justices to enquire into reasonableness of direction—Defence (General) Regulations, 1939, *regs.* 62, 66, 92.

Appeal by case stated from a decision of Herefordshire Justices.

An information was preferred by the Minister of Agriculture and Fisheries under reg. 92 of the Defence (General) Regulations, 1939, against the respondent, Price, for failing to comply with a direction dated the 24th July, 1940, made under reg. 62 and directing him to carry out certain works of cultivation in respect of two fields at a farm. The following facts were established at the hearing of the information: The respondent was the tenant of the farm. By a direction dated the 19th June, 1940, issued by the Herefordshire War Agricultural Executive Committee, the respondent was directed "to cultivate" [the field] "clean and then apply a dressing of ten cwts. per acre basic slag or its equivalent, and sow with a catch crop of kale, rape and turnips. The whole to be completed not later than the 20th July, 1940." It was stated in an accompanying letter that the field was "reported to be in a bad state of cultivation and heavily infested with sorrel." The respondent replied by letter giving reasons why, in his opinion, he could do no more with the field. By a direction dated the 24th July, 1940, issued by the committee, the respondent was directed to deal with the field as directed not later than the 21st July. The respondent not having complied with the direction of the 24th July, the Minister authorised the present information to be laid. It was contended for the Minister that, as the direction had been served on the respondent and he had failed to comply with it, the court was bound in law to convict him; that the reasonableness of the direction could not be questioned in the court; and that the court must convict notwithstanding its view that the direction was unreasonable. It was contended for the respondent that the direction was unreasonable, and that the court was entitled to inquire into the reasonableness of the direction, and, if it thought fit, to dismiss the information. The justices, being of opinion that the direction was unreasonable, dismissed the information, the chairman specifying the reasons of the bench for so deciding. The Minister appealed.

VISCOUNT CALDECOTE, C.J., said that the Minister had power under reg. 62 to give directions by notice relating to agricultural land. Regulation 66 enabled the Minister to delegate to any person or body of persons appointed or approved by him his functions under reg. 62. By reg. 92 any person failing to comply with any order made under any of those regulations was guilty of an offence. The fact that the respondent failed to comply with the direction being found in the case stated, the only question which the justices ought to have considered was not that of the correctness or otherwise of the view held by the agricultural committee, but that raised by the facts relating to the giving of the directions and the failure of the respondent to comply with them. The directions and the failure to comply with them were both proved, an offence had therefore been committed by the respondent, and the case must be remitted to the justices with a direction to convict.

HUMPHREYS and SINGLETON, JJ., agreed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.) and *Diplock*; there was no appearance by or for the respondent.

SOLICITOR: *The Official Solicitor, the Ministry of Agriculture and Fisheries.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Societies.

THE LAW ASSOCIATION.

LORD BLANESBURGH, President of this Association, took the chair at its 124th Annual General Court, held in the Law Society's Hall on the 29th May.

Moving the adoption of the Report and Accounts, he regretted that the surplus of past years had inevitably been replaced by a deficit of £200, and even this took into account a legacy and certain gifts, including a very generous one from Mr. Evelyn Barron. The figures for distribution of benefits were eloquent and creditable to the Association. Members' cases had received between them £813, but no less than £1,483 had been distributed in the relief of non-members' cases. This proportion was in striking contrast to that established at the beginning of the Association's history, when the preponderance was greatly in favour of members. It showed that members were not aiming to provide, or even proud of providing, for themselves and their dependants alone, but aimed at caring for necessitous cases among the whole profession in London. There had been a slight falling-off in membership during the year, the total now being 879, as against 885. He asked members to consider how the deficit and the drop in membership could be countered during the current year. It was difficult to hope for any substantial increase of subscriptions, during the present time of need, by those who were still members. In asking members to subscribe more, it was necessary to be sure that the request was not too difficult to meet; and it would be better to think of another way. The President suggested two methods which appeared to him possible. The first was to endeavour to increase the membership. Each member should approach those of his friends who did not yet belong to the Association, point out its great services, and induce them to join. The second expedient would produce a large sum in extra revenue with no sacrifice to members whatever. A member who entered into a covenant to continue his subscription for seven years, if he so long lived, would present the Association with income tax on the amount of his subscription at ten shillings in the pound. A subscriber who was liable to super-tax might ignore the subscription altogether in his return, and the only person affected adversely was the Chancellor of the Exchequer. To sign such a covenant carried with it no sacrifice, for it merely meant a legal promise to fulfil an obligation which members would fulfil in any event.

Mr. WILLIAM WINTERBOTHAM, chairman of directors, seconded the motion, and the Report and Accounts were adopted without comment. Lord Blanesburgh was re-elected President, to the general satisfaction of the meeting. Lords Justices Luxmoore and Macnaghten and Sir Dennis Herbert, M.P., were elected Vice-Presidents, and the Directors were re-elected together with Mr. C. A. Dawson.

Mr. C. L. NORDON spoke from the body of the hall in warm commendation of the work of the Directors and the kindness and interest which Lord Blanesburgh gave to the Association. They were fortunate that he, though not a solicitor, should "gate-crash" into their charity, as he had into an uncountable number of others. Mr. Nordon proposed two reforms: that the Association should take a descriptive name, e.g., "The Law Association for the Charitable Assistance of London Solicitors"; and that a merger should be arranged between it and the Solicitors' Benevolent Association.

Mr. WINTERBOTHAM replied that the official name of the Association included the description "For the benefit of widows and families of solicitors in the metropolis and vicinity." An arrangement with the Solicitors' Benevolent Association had more than once been considered very seriously, but the difficulties still appeared insuperable.

Dr. E. LESLIE BURGIN, M.P., moving a vote of thanks to the President for his conduct of the business and his services during the year, remarked that at least three previous speakers had made the kind of speech which the vote called for. The motion was no mere formality, but he moved it with intense sincerity. Undoubtedly much of the Association's success was due to the great interest which Lord Blanesburgh took in its affairs, and the large attendance at the Annual Court was explained by the number of those who desired to hear and meet him again. He thought he would have to write a book on Fifty Different Ways of Thanking Lord Blanesburgh, which he had invented year by year in the pleasant performance of this duty.